

Senate Bill 84

By: Senators Heath of the 31st, Williams of the 19th, Cowser of the 46th, Rogers of the 21st, Johnson of the 1st and others

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education, so as to revise provisions relating to eligibility for election as a local board of education member; to provide for legislative findings; to limit the size of local boards of education; to revise provisions relating to per diem and expenses of local board of education members; to revise certain provisions relating to the secretary of local boards of education; to provide for the fundamental roles of local boards of education and local school superintendents; to prohibit certain conflicts of interest of board members; to provide for a code of ethics for local board of education members; to provide for removal of board members under certain circumstances; to revise provisions relating to eligibility for appointment as a school superintendent; to revise provisions relating to training of local board of education members; to provide for submission of certain provisions of this Act for preclearance under the federal Voting Rights Act of 1965, as amended; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education, is amended by adding a new Code section to Article 3, relating to local boards of education, to read as follows:

"20-2-49.

The General Assembly finds that local boards of education play a critical role in setting the policies that lead to the operation and success of local school systems. School board members hold special roles as trustees of public funds, including local, state, and federal funds, while they focus on the singular objective of ensuring each student in the local school system receives a quality basic education. Board duties require specialized skills and training in the performance of vision setting, policy making, approving multimillion dollar budgets, and hiring a qualified superintendent. The motivation to serve as a member

of a local board of education should be the improvement of schools and academic achievement of all students. Service on a local board of education is important citizen service. Given the specialized nature and unique role of membership on a local board of education, this elected office should be characterized and treated differently from other elected offices where the primary duty is independently to represent constituent views. Local board of education members should abide by a code of conduct and conflict of interest policy modeled for their unique roles and responsibilities. And although there are many measures of the success of a local board of education, one is clearly essential: maintaining accreditation and the opportunities it allows the school system's students."

SECTION 2.

Said chapter is further amended by revising Code Section 20-2-51, relating to election of county board of education members, persons ineligible to be members or superintendent, ineligibility for local boards of education, and ineligibility for other offices, as follows:

"20-2-51.

(a) No person shall be eligible for election as a member of a local board of education who is not a resident of the school district in which that person seeks election and of the election district which such person seeks to represent. Whenever there is in a portion of any county a local school system having a board of education of its own, receiving its pro rata of the public school fund directly from the State School Superintendent and having no dealings whatever with the local board, then the members of the board of such county shall be selected from that portion of the county not embraced within the territory covered by such local system.

(b) Whenever a member of a local board of education moves that person's domicile from the district which that person represents, such person shall cease to be a member of such local board of education, and a vacancy shall occur. The member shall provide notice of such move to the secretary of the local board of education and the election superintendent within ten days of such move.

(c)(1) No person ~~employed by or~~ serving on the governing body of a private elementary or secondary educational institution shall be eligible to serve as a member of a local board of education.

(2) No person employed by a local board of education shall be eligible to serve as a member of that board of education.

(3) No person employed by the Department of Education or serving as a member of the State Board of Education shall be eligible to serve as a member of a local board of education. ~~This paragraph shall not apply to institutions above the high school level.~~

~~(2)(4)(A)~~ No person who has an immediate family member sitting on a local board of education or serving as the local school superintendent or as a principal, assistant principal, or system administrative staff in the local school system shall be eligible to serve as a member of such local board of education. As used in this paragraph, the term 'immediate family member' means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent whose employment as the local school superintendent or as a principal, assistant principal, or system administrative staff in the local school system began on or after January 1, 2010. This paragraph shall apply only to local board of education members elected or appointed on or after July 1, 2009. Nothing in this Code section shall affect the employment of any person who is employed by a local school system on or before July 1, 2009, or who is employed by a local school system when an immediate family member becomes a local board of education member for that school system.

(B) Notwithstanding subsection (b) of Code Section 20-2-244, in local school systems in which the initial fall enrollment count conducted in 2009 pursuant to Code Section 20-2-160 does not exceed a full-time equivalent count of 2,800, the State Board of Education shall be authorized to waive this paragraph upon the request of a local board of education or an individual attempting to qualify to run for local board of education member and in accordance with the provisions of subsections (d) and (e) of Code Section 20-2-244; provided, however, that prior to submitting any such request, the local board of education shall, upon its own initiative, or at the request of such individual attempting to qualify to run for local board of education member:

(i) Provide 30 days' notice of the individual's intent to run for office; and

(ii) Conduct a public hearing for the purpose of providing an opportunity for full discussion and public input on the issue of potential nepotism problems and other concerns with regard to such waiver. The public hearing shall be advertised at least seven days prior to the date of such hearing in a local newspaper of general circulation which shall be the same newspaper in which other legal announcements of the local board of education are advertised. The public hearing may be conducted in conjunction with a regular or called meeting of the local board or may be conducted independently, at the local board's discretion.

The cost of such notice and public hearing shall be borne by the local board. The State Board of Education shall approve or deny a waiver request no later than 45 days after receipt of such waiver request, taking into consideration whether the benefit to the public would justify approval of the waiver. An approved waiver must be received by the local election superintendent prior to an individual's filing of a declaration or notice of candidacy in accordance with Article 4 of Chapter 2 of Title 21.

(d) In all counties of this state having a population of not less than 500,000 or more than 600,000 according to the United States decennial census of 1990 or any future such census, the members of the county boards of education taking office after December 1, 1975, shall not hold any other elective governmental office. If any member of any such board should qualify at any time after December 1, 1975, for nomination or election to any other elective governmental office other than for membership on such county board, such member's position on such county board shall thereby become vacant. Such vacancy shall be filled as provided by the law applicable to any such county board.

(e) In addition to any other requirements provided by law, no person shall be eligible for election as a member of a local board of education unless he or she:

(1) Has read and understands the code of ethics and the conflict of interest provisions applicable to members of local boards of education and has agreed to abide by them; and

(2) Has agreed to annually disclose compliance with the State Board of Education's policy on training for members of local boards of education, the code of ethics of the local board of education, and the conflict of interest provisions applicable to members of local boards of education.

Each person offering his or her candidacy for election as a member of a local board of education shall file an affidavit with the officer before whom such person has qualified for such election prior to or at the time of qualifying, which affidavit shall affirm that he or she meets all of the qualifications required pursuant to this subsection. This subsection shall apply only to local board of education members elected or appointed on or after July 1, 2010.

~~(e)~~(f) No person who is on the National Sex Offender Registry or the state sexual offender registry shall be eligible for election to or service on a local board of education."

SECTION 3.

Said chapter is further amended by revising Code Section 20-2-52, relating to terms of office of members of local boards of education, as follows:

"20-2-52.

(a) Members of local boards of education shall be elected for terms of four years unless their terms are otherwise provided by local Act or constitutional amendment.

(b)(1) Each local board of education shall have no more than seven members as provided by local Act.

(2) This subsection shall not apply to a local board of education whose board size exceeds seven members as provided by local constitutional amendment or federal court order or pursuant to a local law in effect prior to July 1, 2010; provided, however, that if

the local law of any such local board of education is amended to revise the number of members on such board, paragraph (1) of this subsection shall apply."

SECTION 4.

Said chapter is further amended by revising subsection (a) of Code Section 20-2-55, relating to per diem, insurance, and expenses of local board members, as follows:

"(a)(1) In any local school system for which no local Act is passed, members of the local board of education shall, when approved by the local board affected, receive a per diem of \$50.00 for each day of attendance at meetings of the board and while meeting and traveling within or outside the state as a member of a committee of the board on official business first authorized by a majority of the board, plus reimbursement for actual expenses necessarily incurred in connection therewith; provided, however, that in any independent school system with a full-time equivalent (FTE) program count of less than 4,000 students for which no local Act is passed, members of the local board of education may, when approved by the affected local board, receive a per diem of not less than \$50.00 and not more than \$100.00 for each day of attendance at meetings of the board and while meeting and traveling within or outside the state as a member of a committee of the board, plus reimbursement for actual expenses. The accounts for such service and expenses shall be submitted for approval to the local school superintendent. In all school districts, the compensation of members of local boards shall be paid only from the local tax funds available to local boards for educational purposes. This paragraph shall apply only to local board of education members elected or appointed prior to July 1, 2010.

(2) In any local school system for which no local Act is passed, members of the local board of education shall, when approved by the local board affected, receive a per diem of \$50.00 for each day of attendance at a meeting, as defined in paragraph (2) of subsection (a) of Code Section 50-14-1, of the board, plus reimbursement for actual expenses necessarily incurred in connection therewith; provided, however, that in any independent school system with a full-time equivalent (FTE) program count of less than 4,000 students for which no local Act is passed, members of the local board of education may, when approved by the affected local board, receive a per diem of not less than \$50.00 and not more than \$100.00 for each day of attendance at a meeting, as defined in paragraph (2) of subsection (a) of Code Section 50-14-1, of the board, plus reimbursement for actual expenses. The accounts for such service and expenses shall be submitted for approval to the local school superintendent. In all school districts, the compensation of members of local boards shall be paid only from the local tax funds available to local boards for educational purposes. This paragraph shall apply only to local board of education members elected or appointed on or after July 1, 2010."

SECTION 5.

Said chapter is further amended by revising subsection (a) of Code Section 20-2-57, relating to organization of county boards of education, as follows:

"(a) Unless otherwise provided by local law or, in the absence of local law, by local board policy, upon being called together by one of their number, the members of the local board shall organize by selecting one of their number as chairperson to serve as such during the term for which that person was chosen as a member of the local board. The local school superintendent shall act as secretary of the local board, ex officio. A majority of the local board shall constitute a quorum for the transaction of business. The votes of a majority of the members present shall be necessary for the transaction of any business or discharge of any duties of the local board of education, provided there is a quorum present. Any action taken by less than a majority of the board members may be rescinded by a majority of the board members at the next regular meeting or within 30 days of such action, whichever is later. It shall be the duty of the superintendent ~~or the board's nominee~~ as secretary to be present at the meetings of the local board, to keep the minutes of its meetings and make a permanent record of them, and to do any other clerical work it may direct the superintendent to do. The superintendent ~~or the board's nominee~~ shall ~~record~~ cause to be recorded in a book, to be provided for the purpose, all official proceedings of the local board, which shall be a public record open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the chairperson and countersigned by the secretary."

SECTION 6.

Said chapter is further amended by revising Code Section 20-2-61, which is reserved, as follows:

"20-2-61.

~~Reserved.~~

(a) The fundamental role of a local board of education shall be to establish policy for the local school system with the focus on student achievement. The fundamental role of a local school superintendent shall be to implement the policy established by the local board. It shall not be the role of the local board of education or individual members of such board to micromanage the superintendent in executing his or her duties, but it shall be the duty of the local board to hold the local school superintendent accountable in the performance of his or her duties. Local board of education members should work together with the entire local board of education and shall not have authority as independent elected officials but shall only be authorized to take official action as members of the board as a whole. Nothing in this subsection shall be construed to alter, limit, expand, or enlarge any powers,

duties, or responsibilities of local boards of education, local board members, or local school superintendents.

(b) Except as may be allowed by law, no local board of education shall delegate or attempt to delegate its policy-making functions."

SECTION 7.

Said chapter is further amended by revising Code Section 20-2-63, which is reserved, as follows:

"20-2-63.

~~Reserved.~~

(a)(1) No local board of education member shall use or attempt to use his or her official position to secure unwarranted privileges, advantages, or employment for himself or herself, his or her immediate family member, or others.

(2) No local board of education member shall act in his or her official capacity in any matter where he or she, his or her immediate family member, or a business organization in which he or she has an interest has a material financial interest that would reasonably be expected to impair his or her objectivity or independence of judgment. Compliance with Code Section 20-2-505 shall not constitute a violation of this paragraph.

(3) No local board of education member shall solicit or accept or knowingly allow his or her immediate family member or a business organization in which he or she has an interest to solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing that board member in the discharge of his or her official duties. This paragraph shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office if the local board of education member has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local board of education member in the discharge of his or her official duties. For purposes of this paragraph, a gift, favor, loan, contribution, service, promise, or other thing of value shall not include the items contained in subparagraphs (a)(2)(A) through (a)(2)(J) of Code Section 16-10-2.

(4) No local board of education member shall use, or knowingly allow to be used, his or her official position or any information not generally available to the members of the public which he or she receives or acquires in the course of and by reason of his or her official position for the purpose of securing financial gain for himself or herself, his or

her immediate family member, or any business organization with which he or she is associated.

(5) No local board of education member or business organization in which he or she has an interest shall represent any person or party other than the local board of education or local school system in connection with any cause, proceeding, application, or other matter pending before the local school system in which he or she serves or in any proceeding involving the local school system in which he or she serves.

(6) No local board of education member shall be prohibited from making an inquiry for information on behalf of a constituent if no fee, reward, or other thing of value is promised to, given to, or accepted by the local board of education member or his or her immediate family member in return therefor.

(7) No local board of education member shall disclose or discuss any information which is subject to attorney-client privilege belonging to the local board of education to any person other than other board members, the board attorney, the local school superintendent, or persons designated by the local school superintendent for such purposes unless such privilege has been waived by a majority vote of the whole board.

(8) No member of a local board of education may also be an officer of any organization that sells goods or services to that local school system, except as provided in Code Section 20-2-505 and excluding nonprofit membership organizations.

(9) No local board of education member shall be deemed in conflict with this subsection if, by reason of his or her participation in any matter required to be voted upon, no material or monetary gain accrues to him or her as a member of any profession, occupation, or group to any greater extent than any gain could reasonably be expected to accrue to any other member of that profession, occupation, or group.

(b) Upon a motion supported by a two-thirds' vote, a local board of education may choose to conduct a hearing concerning the violation by a local board of education member of any conflict of interest provision in subsection (a) of this Code section. The local board of education member accused of violating said provision shall have 30 days' notice prior to a hearing on the matter. Said accused member may bring witnesses on his or her behalf, and the local board of education may call witnesses to inquire into the matter. If it is found by a vote of two-thirds of all the members of the board that the accused member has violated a conflict of interest provision contained in subsection (a) of this Code section, the local board shall determine an appropriate sanction. A board member subject to sanction pursuant to this Code section may, within 30 days of such sanction vote, appeal such decision to the State Board of Education, which shall be empowered to affirm or reverse the decision to sanction such board member. The State Board of Education shall

promulgate rules governing such appeal process. This subsection shall apply only to local board of education members elected or appointed on or after July 1, 2010.

(c) As used in this Code section, the term 'immediate family member' means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent."

SECTION 8.

Said chapter is further amended by adding new Code sections to Article 3, relating to local boards of education, to read as follows:

"20-2-72.

(a) The State Board of Education shall adopt a model code of ethics for members of local boards of education by October 1, 2010. Such model code of ethics shall also include appropriate consequences for violation of a provision or provisions of such code. The State Board of Education may periodically adopt revisions to such model code as it deems necessary.

(b) Within three months of adoption by the State Board of Education of a model code of ethics pursuant to subsection (a) of this Code section, each local board of education shall adopt a code of ethics that includes, at a minimum, such model code of ethics. Each local board of education shall incorporate into its code of ethics any revisions adopted by the State Board of Education to the model code of ethics pursuant to subsection (a) of this Code section within three months of adoption of such revisions.

20-2-73.

(a) Notwithstanding Code Section 20-2-54.1 or any other provisions of law to the contrary, if a local school system or school is placed on the level of accreditation immediately preceding loss of accreditation for school board governance related reasons by one or more accrediting agencies included in subparagraph (6.1)(A) of Code Section 20-3-519, the State Board of Education shall conduct a hearing in not less than ten days nor more than 30 days and recommend to the Governor whether to suspend all eligible members of the local board of education with pay. If the State Board of Education makes such recommendation, the Governor may, in his or her discretion, suspend all eligible members of the local board of education with pay and, in consultation with the State Board of Education, appoint temporary replacement members who shall be otherwise qualified to serve as members of such board.

(b) Any local board of education member suspended under this Code section may petition the Governor for reinstatement no earlier than 30 days following suspension and no later than 60 days following suspension. In the event that a suspended member does not petition for reinstatement within the allotted time period, his or her suspension shall be converted

into permanent removal, and the temporary replacement member shall become a permanent member and serve out the remainder of the term of the removed member.

(c) Upon petition for reinstatement by a suspended local board of education member, the Governor or his or her designated agent shall conduct a hearing for the purpose of receiving evidence relative to whether the local board of education member's continued service on the local board of education is more likely than not to improve the ability of the local school system or school to retain its accreditation. The appealing member shall be given at least 30 days' notice prior to such hearing. Such hearing shall be held not later than 90 days after the petition is filed and in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that the individual conducting the hearing shall have the power to call witnesses and request documents on his or her own initiative. For purposes of said chapter and any hearing conducted pursuant to this Code section, the Governor shall be considered the 'agency' and the Attorney General or his or her designee shall represent the interests of the Governor in the hearing. If it is determined that it is more likely than not that the local board of education member's continued service on the local board of education improves the ability of the local school system or school to retain its accreditation, the member shall be immediately reinstated; otherwise, the member shall be permanently removed, and the temporary replacement member shall become a permanent member and serve out the remainder of the term of the removed member or until the next general election which is at least six months after the member was permanently removed, whichever is sooner. Judicial review of any such decision shall be in accordance with Chapter 13 of Title 50.

(d) This Code section shall apply only to a local school system or school which is placed on the level of accreditation immediately preceding loss of accreditation on or after July 1, 2010.

(e) This Code section shall apply only to local board of education members elected or appointed on or after July 1, 2010."

SECTION 9.

Said chapter is further amended by revising subsection (b) of Code Section 20-2-101, relating to appointment of county school superintendents, as follows:

"(b)(1) No person shall be eligible to be appointed or employed as superintendent of schools of any county or independent school system unless such person is of good moral character, has never been convicted of any crime involving moral turpitude, and possesses acceptable business or management experience as specified by the Professional Standards Commission or the minimum valid certificate or a letter of eligibility for said certificate required by the Professional Standards Commission.

(2) No person shall be eligible to be appointed, employed, or to serve as superintendent of schools of any county or independent school system who has an immediate family member sitting on the local board of education for such school system or who has an immediate family member hired as or promoted to a principal, assistant principal, or system administrative staff on or after July 1, 2009, by that school system. As used in this subsection, the term 'immediate family member' ~~shall have the same meaning as in subsection (c) of Code Section 20-2-51~~ means a spouse, child, sibling, or parent or the spouse of a child, sibling, or parent whose term as a member of the local board of education or whose employment as a principal, assistant principal, or system administrative staff in the local school system began on or after January 1, 2010. Nothing in this Code section shall affect the employment of any person who is employed by a local school system on or before July 1, 2009, or who is employed by a local school system when an immediate family member becomes the superintendent for that school system."

SECTION 10.

Said chapter is further amended by revising subsection (b) of Code Section 20-2-230, relating to staff development programs, as follows:

"(b)(1) The State Board of Education shall adopt a training program for members of local boards of education by July 1, 2011. The State Board of Education may periodically adopt revisions to such training program as it deems necessary.

(2) Within three months of adoption by the State Board of Education of a training program pursuant to paragraph (1) of this subsection, each local board of education and each governing board of other local units of administration shall adopt a training program for members of such boards that includes, at a minimum, such training program and requirements established by the State Board of Education pursuant to paragraph (1) of this subsection. Each local board of education shall incorporate any revisions adopted by the State Board of Education to the training program pursuant to paragraph (1) of this subsection within three months of adoption of such revisions. ~~All new members of governing boards of local units of administration shall, before or within one year after assuming office, receive at least 12 hours of orientation to the educational program objectives of Georgia and instruction in school finance, school law, with special emphasis on the 'Quality Basic Education Act'; responsiveness to the community; the ethics, duties, and responsibilities of local governing board members; annual performance evaluation of the school superintendent and the local board of education; and such other topics as the State Board of Education may deem to be necessary; provided, however, that at least six of these 12 hours of training shall be specifically related to education finance,~~

~~generally accepted accounting principles, and budgeting. The board of education of the Department of Juvenile Justice shall be exempt from the six hours of training in education finance, generally accepted accounting principles, and budgeting. All members of boards of local units of administration are required to participate in at least one day of training annually to ensure the effective management and operation of local units of administration. The Georgia Education Leadership Academy is authorized, in cooperation with the Georgia School Boards Association or other agencies and associations, to conduct workshops annually to provide such instruction and to present to each board member completing such annual workshop for the first time an appropriate certificate. The Georgia Education Leadership Academy shall adopt such procedures as may be necessary to verify the attendance at such annual workshops of veteran members of boards of local units of administration.~~

(3) All boards of local units of administration are authorized to pay such board members for attendance at a required training program the same per diem as authorized by local or general law for attendance at regular or special meetings, as well as reimbursement of actual expenses for travel, lodging, meals, and registration fees for such workshops training, either before or after such board members assume office."

SECTION 11.

The Attorney General of Georgia shall cause Sections 2, 3, 7, and 8 of this Act to be submitted for preclearance under the federal Voting Rights Act of 1965, as amended, and such submission shall be made to the United States Department of Justice or filed with the appropriate court no later than 45 days after the date on which this Act is approved by the Governor or becomes law without such approval. If, as of June 30, 2011, implementation of any of the submitted sections of this Act are not permissible under the Voting Rights Act of 1965, as amended, then as of such date, such section or sections of this Act shall be void and shall stand repealed in their entirety.

SECTION 12.

All laws and parts of laws in conflict with this Act are repealed.